

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. 96B026(C)

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
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ROBERT N. WORKMAN,

Complainant,

vs.

DEPARTMENT OF CORRECTIONS,  
DELTA CORRECTIONAL CENTER,

Respondent.  
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The hearing convened on April 22, 1996, and concluded on July 9, 1996, in Denver before Margot W. Jones, administrative law judge (ALJ). Respondent appeared at hearing through Thomas S. Parchman, assistant attorney general. Complainant, Robert Workman, was present at the hearing and represented by James R. Gilsdorf, attorney at law.

Respondent called the following employees of the Department of Corrections (department) as witnesses to testify at hearing: Pam Perdew; Clyde Stahl; Sue Worthington; and Bob Hickox. Complainant testified in his own behalf and called Bob Hickox to testify at hearing.

Respondent's exhibits 1, 2, 4 through 17, 20 through 29, 31, 32, 34 through 37, 39 through 43 and 45 were admitted into evidence without objection. Respondent's exhibits 18 and 19 were admitted into evidence over objection. Respondent's exhibits 33 and 44 were admitted into evidence at hearing. (See Preliminary Matters, paragraph 1 for discussion of these exhibits.)

Complainant's exhibits A, C through E and G were admitted into evidence without objection. Complainant's exhibit F was admitted into evidence over objection.

**MATTER APPEALED**

The consolidated appeal pertains to complainant's appeals of a disciplinary demotion and termination.

**ISSUES**

1. Whether complainant engaged in the acts for which discipline was imposed.

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2. Whether the conduct proven to have occurred constituted violation of State Personnel Board Rule, R8-3-3, wilful failure to perform duties assigned and wilful misconduct.

3. Whether respondent properly delegated appointing authority to Superintendent Bob Hickox.

4. Whether the respondent's decisions to demote complainant and terminate his employment was arbitrary, capricious or contrary to rule or law.

5. Whether either party is entitled to an award of attorney fees and costs.

#### **PRELIMINARY MATTERS**

1. Respondent's exhibits 33 and 44 were offered into evidence by respondent as after acquired evidence of complainant's poor job performance. Complainant objected to the admission of these documents at hearing on the grounds that he was entitled to be presented with the allegations which form the basis for the disciplinary action and provided an opportunity to defend against them. Complainant contended that by permitting respondent to present after acquired evidence he was denied due process of law.

At hearing, the ALJ erroneously ruled that the after acquired evidence was not admissible. Upon closer review of the case law pertaining to after acquired evidence, it is concluded that the evidence and testimony about respondent's discoveries about complainant's alleged poor job performance are admissible. For after acquired evidence to be admissible, it need only be shown that that respondent was unaware of the misconduct when complainant was discharged, the misconduct would have justified discharge, and the respondent would indeed have discharged complainant had respondent known of the misconduct. Summers v. State Farm Mutual Auto Ins. Co., 864 F.2d 700 (10th Cir. 1988).

In this case, it was Superintendent Bob Hickox's testimony that after complainant was terminated from employment on December 7, 1995, his supervisor, Captain Clyde Stahl, went through his office and discovered more examples of complainant's wilful failure to perform assigned duties. These examples of complainant's failure to perform his assigned duties were represented to be grounds for termination of employment.

2. At hearing on April 22, 1996, respondent moved the ALJ to enter an order precluding complainant from offering evidence of settlement discussions. Complainant contended that he did not intend to present evidence related to settlement. Respondent motion was denied on the ground that the ALJ did not have evidence that complainant intended to present such evidence and therefore a

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ruling on this issue entered as a preliminary matter was not appropriate.

3. On April 22, 1996, respondent moved the ALJ to enter an order precluding complainant from raising issues related to an October 13, 1995, corrective action. Respondent contended that since complainant failed to grieve the corrective action, he should be precluded from presenting evidence related to the discipline. Complainant contended that his notice of appeal and prehearing statement did not raise the issue to be considered at hearing, thus respondent's motion was without foundation. Respondent's motion was denied.

#### **FINDINGS OF FACT**

1. Complainant, Robert Workman (Workman), began his employment with the department in 1985 as a correctional officer I. He remained employed by the department until December 7, 1995, when his employment was terminated.

2. Workman began working for the department in an entry level position as a correctional officer I at Canon City Correctional Facility. Thereafter, he transferred to the Rifle Correctional Facility where he continued to work as a correctional officer I. He remained at the Rifle Correctional Facility for two years. During this period of time, he was promoted to the rank of sergeant.

3. Workman was promoted to the rank of lieutenant, a correctional officer III, in 1990 when he transferred to the Delta Correctional Center (DCC). At this facility, Workman was assigned to work as a case manager. On August 25, 1995, Workman was employed as a case manager, Grade 84, Step 7. On this date, he received a disciplinary demotion for a one year period to Grade 84, Step 4. (Exhibit 1 and 2.) Workman was classified as a lieutenant, Grade 84, Step 4, at the time he was terminated from employment with the department on December 7, 1995. (Exhibit 40.)

4. The DCC is a minimum security correctional facility. It does not have brick walls or a guard on the front gate. Inmates are permitted to walk freely around the grounds of the prison in a quiet and calm atmosphere. Case managers encounter inmates throughout the day and interact with them in a casual atmosphere.

5. There are 300 inmates incarcerated at DCC. Inmates at DCC have been convicted of serious crimes, such as, first degree murder and burglary. No sex offenders are incarcerated at DCC unless they have received treatment. The minimum security facility is often the last stop for an inmate before parole. Consequently, there is a high turnover among the inmates assigned to a case manager.

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6. As a case manager, Workman had a wide array of duties. Those duties which are pertinent to the reasons that he was demoted and terminated from employment include, the following:

1. Interviewing and counseling incarcerated felons concerning treatment progress, education, pre-release, goal setting and developing of socially acceptable ideas and problem solving skills. Utilizing communication/interpersonal skills to extract correct information from sometimes unwilling and manipulative persons. Guiding inmates in solving their institutional problems and resolving grievances informally whenever possible.
2. Writing performance assessment summaries, Community Corrections referrals and pre-parole plans by researching the necessary information. Filling out classification documents, parole risk assessments, facility transfers, new arrival orientation, gate clearance sheets, interstate compacts, clemency forms and other pre-printed documents.
3. Compiling and logging all pertinent case information on chronological recording sheets, earned time grant worksheets and track sheets. Researching and updating case working file within specified time frames. Presenting pre-release plans to the Parole Board and Community Corrections Board.

(Exhibit 43.)

7. Workman was assigned a case load of inmates. During the period from 1990 to 1995, when Workman served in the case manager position his case load doubled. This was attributed to prison expansion statewide. In June, 1995, Workman and his co-workers were assigned 75 to 85 inmates.

8. In August, 1995, there were four case managers at DCC. The case managers included Workman, Pam Perdew, Clyde Stahl and Lieutenant Cotton.

9. Pam Perdew began her employment as a case manager in November, 1992. Perdew was trained in her job duties as a case manager by Workman. Workman was an excellent trainer. He showed attention to all details and trained Perdew to do the same. Workman trained Perdew for a two year period, showing her how to track the cases.

10. Clyde Stahl began his employment as a case manager in January, 1993. He remained Workman's co-worker and peer until July, 1995, when he was promoted to the case manager supervisor

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position. Prior to July, 1995, the case managers were supervised by Sue Worthington. In July, 1995, when Stahl was promoted to supervisor of case managers, he reported to Worthington. As a working supervisor, Stahl assigned himself a smaller case load of approximately 50 inmates.

11. The case managers' job duties significantly impact the security of the correctional center and the morale of the inmates housed there. Case managers are responsible for the classification of inmates at DCC. Only inmates classified as minimum security can remain housed here. Inmate classifications can change as a result of the violation of the Code of Penal Discipline resulting in the inmate being regressed and moved to a more secure correctional facility. It is important to DCC security that inmates classifications remain current so that only inmates with minimum security classifications remain incarcerated there.

12. Progress Assessment Summaries (PAS) are required to be maintained and updated by the case manager on each inmate assigned to their case load. A case manager is expected to update the PAS on each inmate every six months. The PAS will note whether an inmate has worked on or completed educational or other personal development programs which he may have been assigned to complete. Efforts to attend such programs or the completion of such programs can affect an inmates' classification entitling the inmate to remain at a minimum security facility or to parole.

13. Case managers are required to maintain the phone lists and visitor lists for the inmates. If there is a delay in the handling of a phone list or visitor list by a case manager, it may prevent the inmate from receiving the telephone calls and visits to which they are entitled.

14. A case managers' failure to act promptly with regard to his assigned duties affects the inmates' morale since the case managers actions frequently determine when and whether an inmate will be released. DCC operates in large part on an honor system. When the case managers delays in the performance of his duties, delaying the release of an inmate or preventing the inmate from having contact with family and friends, the honor system may be undermined jeopardizing security at the facility and interrupting rehabilitation of the inmate.

15. Workman's job performance was evaluated during his employment with the department. During the period from April, 1990, to June 1991, while employed as a case manager at the DCC Workman received two interim performance ratings with overall ratings of "commendable". (Exhibits 18 and 19.)

16. Workman received a Performance Progress Review covering the

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period from July, 1991 to January, 1992, in which the following comments are made:

Management: Schedules and deadlines for the completion of work have generally been met at a satisfactory level. However, at times, work is behind schedule.

Occupational/Professional Competence: Quality, quantity, and timeliness of work have been adequate. He maintains currency on changes, updates, and improvements regarding his work. He is able to interpret laws, rules, regulations and policies as they relate to his Case Management position.

Problem Analysis and Decision Making: He addresses and resolves day to day problems adequately, obtains facts prior to making decisions and seeks input from others prior to more effectively make decisions.

Planning, Organizing and Coordinating: He maintains records, forms and documents which are requisite to his job. He develops appropriate plans and procedures and coordinates with others the implementation of those plans and procedures which will enhance his job effectiveness.

Organizational Commitment and Adaptability: He processes adequate knowledge of established policies and procedures and applies his knowledge in an efficacious manner. He does not abuse leave procedures and puts in more time than required. He participates in the decision making process and modifies and adopts plans and procedures accordingly.

Communication: He communicates in a timely fashion to provide and exchange information. He keeps others informed and considers their ideas on issues which impact upon them. He prepares written documents which are clear and understandable.

(Exhibit 17.)

17. During the rating period from July, 1991, to June, 1992, Workman received an annual performance rating with an overall rating of "good". (Exhibit 16.) Workman received "good" and "commendable" ratings in all factors in which he was rated. He received an overall point score of 370 points which was 4 points from a "commendable" rating.

18. In this rating, his supervisor comments that areas in need of development are that Workman "needs to work on his tactfulness and

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diplomacy in negotiations and/or confrontation with others. Workman disagreed with the rating he was given during this rating period. He indicated that it did not accurately reflect his job performance.

19. Workman received a Performance Progress Review Form for the period covering July, 1992, to December, 1992. (Exhibit 15.) In this progress review form the following critique was provided about Workman's job performance:

Management: Bob's performance in this factor is rated as needs improvement. Performance has falling with regard to the IPO's in that monthly case management self-audits, monthly statistics and monthly inmate phone logs are not submitted as prescribed by the last working day of the month. Likewise, case management documents must be completed within a timely manner. Bob needs to conscientiously strive to work at his level of ability to improve performance in this factor.

Occupational/Professional Competence: Bob performance in this factor is overall commendable. He excels in interpreting applicable laws, rules and policies; and applies technical procedures in doing the job. IPO is satisfied by him maintaining security of his assigned area. Bob needs to improve upon timeliness for assignments and needs to insure he requests and attends training to meet the 40 annual requirement.

Problem Analysis and Decision Making: Bob's performance in this factor is commendable. He is adept at resolving day to day problems in the performance of his duties, and is studious at ensuring that eligibility criteria are met and the posted parole and release dates are accurate for the benefit of both his assigned clientele and the agency.

Planning, Organizing and Coordinating: Bob has developed plans and procedures to accumulate programs participation statistics which enhance the operation of the unit by allowing case managers to submit accurate and timely earned time grants. Bob did an exceptional job of assuming an increased caseload during this rating period with the turnover of three of the four case managers at DCC. This created a high stress situation and it was accomplished with minimum crises.

20. During the period from July, 1992, to June, 1993, Workman received an annual performance rating of "good". (Exhibit 14.) He received a total of 350 points which was one point from a "commendable" rating. His supervisor noted that areas in need of

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development included "time management to meet deadlines and attention to details to meet optimum performance level."

21. In June, 1993, Workman received a letter of counselling from his supervisor Sue Worthington. (Exhibit 10.) The letter of counselling advised him that he missed a chemical agents training and he was below the required minimum training hours for the fiscal year. The letter of counselling further noted that an inmate was paroled in May, 1993, that Workman was provided the parole papers one week before the inmate was paroled and that Workman failed to serve the inmate with the parole papers and the parole agreement until the day before the parole. Finally, the letter of counselling noted that another inmate was prepared to be paroled. The day before the inmate's parole, it was discovered that Workman failed to discuss the parole agreement with the inmate despite the fact that the agreement was received at the DCC more than two weeks before the inmate's parole.

22. During the period from July, 1993, to October, 1993, Workman received an interim performance rating of "good" for his duties as a case manager. (Exhibit 13.) No comments were made about his job performance and all factor ratings were good or better.

23. The interim rating was given because in October, 1993, at department managers' request, Workman transferred to a position as a shift supervisor. In the shift supervisors' position, Workman was assigned to supervise subordinate correctional officers, assign duty posts to those officers and supervise the functioning of the correctional facility.

24. This transfer was to accommodate the needs of a shift supervisor who managers believed would perform better in the position of case manager. Workman was advised that he was viewed as an officer who could perform either position competently. He remained ranked as a lieutenant.

25. Workman received a job performance rating covering the period from December, 1993, to June, 1994, for his duties as a shift supervisor. (Exhibit 12.) Workman received an overall rating of "commendable". During this rating period in January, 1994, Workman received a letter of counselling in which he was admonished for failing to conduct a crisis intervention/counselling session with an inmate in the appropriate area of the correctional facility, failing to maintain control during the counselling session and failed to report an incident to supervisors. (Exhibit 9.)

26. In October, 1994, Workman was asked to return to his position as a case manager. Prior to his return to the case manager position, he received a job performance rating covering the period from July, 1994, to October, 1994. (Exhibit C.) Workman received

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an overall job performance rating of "commendable".

27. In the latter part of 1994, Workman had martial problems. As a result of the stress during this period, in September, 1994, Workman drank excessively on one occasion at a party and was cited for a misdemeanor driving while ability impaired. Workman was required by the court to attend alcohol counselling. Workman did not have a history of alcohol abuse prior to this incident or thereafter. (Exhibit 8.)

28. In March, 1995, Workman received a letter of counselling as a result of the misdemeanor conviction. (EXhibit 8.) He was warned that should he be convicted of any other similar offense it might result in the imposition of disciplinary action.

29. In or around June 1995, Workman divorced his wife and was awarded custody of his five children. Workman found it very difficult to balance his responsibilities at work and home during this period. In June, 1995, Workman advised his supervisor Sue Worthington that he had divorced his wife and that he had custody of his five children.

30. During the period from December, 1994, to June, 1995, Workman received an annual performance rating of "good". (Exhibit 11.) It was noted that he needed time management training and that he need to apply that training in the performance of his everyday duties.

31. Workman took annual leave from July 24 to July 31, 1995. During this period case manager Pam Perdew was assigned to cover Workman's case load. A number of discovery were made which indicated that Workman failed to keep up to date with his case load. It was discovered that the filing in Workman's office was not up to date, that inmate phone lists and visiting lists failed to be reviewed and submitted to the appropriate departments for approval and that inmates who were leaving for a weekly trip to Buena Vista Correctional Facility had been identified as ready for the trip when in fact Workman failed to update their file folders with work ratings and the PAS.

32. During this period, Workman failed to serve a detainer on an inmate for a six year Community Corrections sentence where the inmate was scheduled to leave DCC the following day. Pam Perdew served the detainer on the inmate and distributed copies of the detainer to the appropriate departments.

33. During this period the following documents were found in Workman's office: 19 PAS were found stuck in a cubbyhole; two inmate copies of Parole Board Waiver forms; one inamte mental health referrals; and an original janitorial certificate received at DCC in November, 1994, which should have been provide to the

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recipient inmate. It was also discovered that Workman failed to timely process paperwork for two inmates who had requested referral to Community Corrections. Documents were discovered in Workman's office which related to inmates who were no longer at the facility, such as, birth certificates, GED and other education documents.

34. When Workman returned from his vacation on August 1, 1995, he met with DCC managers to discuss his job performance. He was advised that his job performance was considered to be unacceptable. Workman advised the managers that he was to blame for the documents discovered in his office during his vacation. He further advised the managers that he had personal family problems that caused him to be distracted.

35. During the August 1 meeting, Workman was further advised that job performance factors which he had been warned needed improvement in June, 1995, were now considered to be unacceptable. Workman was advised that the information gathered during his vacation about his poor job performance would be referred to Superintendent Hickox for possible disciplinary action.

36. Following receipt of information from Workman's supervisor about his failure to perform his job duties competently (Exhibit 7), on August 14, 1995, Superintendent Bob Hickox (Hickox) requested appointing authority to conduct a meeting consider whether disciplinary action should be imposed on Workman for failure to perform assigned duties. Hickox's memorandum requesting appointing authority was directed to Warren Diesslin, Western Regional Director of the department. (Exhibit 6.)

37. On August 15, 1995, Warren Diesslin wrote to Hickox delegating appointing authority to him to conduct a R8-3-3 meeting with Workman. The August 15 memorandum was copied to John Perko, the deputy director of the department and the director of the division of adult services. (Exhibit 5.)

38. By notice dated August 15, 1995, Workman was advised that an R8-3-3 meeting would be held with him on August 22, 1995. (Exhibit 4.) Workman attended the meeting with his representative Bill Bever of the Colorado Association of Public Employees. The meeting was held to discuss Workman's failure to perform certain job duties which were discovered by his supervisors during his July, 1995, vacation.

39. At the R8-3-3 meeting, Workman explained to Hickox that in some instances where the inmate copies of documents were discovered in his office, he simply failed to provide the inmate with his copy but had taking all other necessary actions. Workman further explained in the instances where two inmates wanted to be referred for Community Corrections, he had discovered that the

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inmates were not eligible for Community Corrections, he advised the inmates of this fact, but failed to document that he had so advised the inmates. (Exhibit 3.)

40. With regard to most of the examples of poor job performance, Workman admitted to Hickox that he was guilty of sloppy work and that he would never let these things happen again.

41. Following the R8-3-3 meeting, by letter dated August 22, 1995, Hickox advised Workman that due to his failure to perform his assigned duties he would be demoted from a case manager I position to a correctional officer II, from grade 84, step 7 to grade 84 step 1, effective September 1, 1995. In the notice of disciplinary action, Workman was further advised that he was required to complete case manager training by December 1, 1995.

42. Finally, the August 22, 1995, warned Workman that in the future should he again be found to have wilfully failed to perform assigned duties he would be subject to disciplinary action up to and including termination of his employment.

43. By letter dated August 25, 1995, Workman was advised that the August 22, 1995, notice of disciplinary demotion was revised to reflect that the disciplinary demotion imposed would be effective for a one year period. Workman was advised that if during the one year period no other disciplinary action was imposed he would be restored to the case manager I position.

44. The notice of disciplinary demotion dated August 22, 1995, and the amended notice of disciplinary demotion dated August 25, 1995, were copied to John Perko, deputy director of the department and the director of the division of adult services.

**45. Prior Workman's December, 1995, termination from employment, the department did not conduct case manager training. However,** between the August 22 disciplinary demotion and November 6, 1995, Workman completed training programs intended to assist him in improving his job performance.

46. On October 13, 1995, a corrective action was imposed on Workman for his failure to promptly process the paperwork for the parole of an inmate. An inmate was scheduled to be paroled at 8:00 a.m. on October 12, 1995. Workman received a parole agreement at noon on October 10, 1995, which was required to be signed by the inmate before his parole. Workman held the agreement until the afternoon of October 11, 1995, at which time the inmate refused to sign the agreement because of its terms. Ultimately on October 12, permission was granted by the Parole Board to delete the offending terms of the agreement, the agreement was signed by the inmate and the inmate was paroled one hour later than scheduled at 9:00 a.m. on October 12.

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47. On November 10, 1995, Workman's supervisor, Sue Worthington, learned that Workman failed to reclassify an inmate following conviction for violation of the code of penal discipline. Such a conviction can result in an inmate being removed from the minimum security facility at DCC. In this instance, Workman was aware of the inmate's conviction on October 26, 1995, and as of Worthington's discovery of the documents related to the inmate's conviction, Workman had not submitted the documents to the committee for review for possible reclassification on November 10, 1995.

48. On November 14, 1995, Workman failed to make inmates assigned to his case load aware of a Parole Board hearing which they were required to attend. On the same date, Workman appeared at the Parole Board hearing and presented incomplete documents to the board. Workman was asked to complete the documents during the course of the Parole Board hearing.

49. As a result of Workman's failure to notify the inmates of their need to appear at a Parole Board hearing and his failure to appear for the hearing with the inmates' paperwork prepared for review by the Parole Board, on November 17, 1995, Sue Worthington gave Workman notice that at Board Rule, R8-3-3 meeting would be held with him on November 30, 1995. (Exhibit 22.) The notice of the R8-3-3 meeting advised Workman that Hickox would conduct the meeting "per the authorization of Warren Diesslin, Western Region Director".

50. Subsequently, the November 30, 1995, R8-3-3 meeting was cancelled.

51. On November 20 to 24, 1995, Workman was on annual leave. His case manager duties were again covered by a co-worker during this period. And, it was again discovered by his supervisors that he failed to perform assigned duties. Specifically, it was discovered that Workman did not properly prepare an inmate's file for an interstate parole to Texas. The inmate was scheduled to be paroled in December, 1995. The interstate parole plan should have been submitted to the Parole Board 90 days before the inmate met the Parole Board. Instead, during Workman's annual leave, his co-worker prepare the parole papers and the papers were submitted to the Parole Board 39 days before the inmate's parole.

52. The inmate who was applying for the interstate parole reported to Workman's supervisors that in August, 1995, he provided Workman the necessary information to complete the paperwork for the interstate parole. The inmate further advised Workman's supervisors that Workman promised to submit the information to the appropriate authority in September, 1995. The inmate further advised supervisors that he inquired of Workman in

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October, 1995, about the progress of the parole plan, at which time Workman advised the inmate that he did not know anything about the parole plan. Supervisors reviewing this work noted that Workman failed to make any entry in the inmate's chronological file since August, 1995.

53. Workman appealed the August 25 disciplinary demotion. On November 28, 1995, the parties appeared for hearing in case number 96B026, which pertains to the disciplinary demotion. The department appeared at hearing through Michael Williams, assistant attorney general. Workman was present at hearing and represented by James Gilsdorf, attorney at law.

54. The parties asked leave to conduct a settlement conference prior to the commencement of the hearing. The parties met from 9:00 a.m. to 11:30 a.m. on November 28, 1995, to negotiate a settlement. At 11:30 a.m., the parties advised the administrative law judge that a settlement was imminent and that they needed additional time to discuss the terms of the agreement. The parties asked that the hearing date be continued to permit them to have additional time to resolve this matter. The hearing was continued to February 5, 1996.

55. The parties were not successful in reaching a settlement following the November 28, 1995, hearing date.

56. On November 29, 1995, Hickox was delegated appointing authority to conduct a R8-3-3 meeting with Workman. The delegation of appointing authority from Warren Diesslin, western region director, was dated November 29, 1995. John Perko, the deputy director of the department and the director of the division of adult services, was not copied on the delegation of authority from Diesslin to Hickox. (Exhibit 21.)

57. By notice dated November 29, 1995, Workman was advised that because of allegations of wilful misconduct and wilful failure to perform assigned duties a R8-3-3 meeting would be held with him on December 7, 1995. (Exhibit 20.)

58. Workman and Bill Bever, business representative for the Colorado Association of Public Employees, were concerned that Hickox was biased against Workman and could not fairly conduct a R8-3-3 meeting with Workman. Bever wrote Warren Diesslin advising him of his concerns about Hickox's bias and asking that another manager be appointed to conduct the R8-3-3 meeting. Diesslin declined to remove Hickox as appointing authority.

59. At the December R8-3-3 meeting, Workman and Hickox discussed the incidents referenced in Findings of Fact above, paragraphs 46, 47, and 48, where Workman failed to timely reclassify an inmate who was convicted of violation of the Code of Penal Discipline,

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did not notify two inmates of the need for their appearance at a parole Board hearing and he did not have paperwork prepared for an inmate who appeared before the Parole Board.

60. Workman explained to Hickox at the R8-3-3 meeting that with regard to the untimely reclassification of the inmate convicted of violation of the Code of Penal Discipline he would not allow this mistake to occur again. He further explained that he attempted to locate the inmate to obtain his signature and when he did not appear, Workman forgot.

61. With regard to the inmates that Workman was accused of neglecting to inform of the Parole Board meeting, Workman claimed that one inmate was informed of the meeting in September, 1995, and the other inmate Workman claimed had a life sentence and had met with the Parole Board every year in November for five years, and therefore should have been aware of the meeting.

62. Workman further explained that the inmate whose forms were incomplete at the time his case was to be presented to the Parole Board caused a relatively insignificant delay in the case presentation. An other case manager presented a case to the Parol Board, while Workman took one or two minutes to complete risk assessment forms for the inmate.

63. Also discussed at the R8-3-3 meeting was Workman's entry in a chronological file for one of the inmates who he was accused of not informing of the need for their appearance at the November, 1995, Parole Board hearing. Hickox questioned Workman whether an entry made in the inmate's chronological file was truthful and accurate. (Exhibit 35.)

64. Workman explained that he noted in the inmate's chronological file that on October 26, 1995, he met with the inmate to review custody assessment documents; however, the documents could not be located. Workman claimed that he was advised by his supervisor Clyde Stahl on November 15, 1995, that the custody documents referenced in the inmate's October 26 chronological entry could not be located. Workman claimed he was attempting to correct the chronological file by crossing out the October 26 entry and making a new entry on November 15 which reflected that the inmate signed custody documents on that date.

65. After the December 7, 1995, R8-3-3 meeting, Hickox decided to terminate Workman's employment. Hickox concluded that Workman had been making the same type of errors for a five year period, that the errors were made wilfully and that Workman's poor job performance jeopardized the safety and security of the facility. Hickox decided that a lesser discipline was not acceptable because he did not want to transfer an employee who had poor work habits to another position.

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66. The December 7, 1995, notice of termination was copied to John Perko, the deputy director of the department and the division director of adult services.

67. Following Workman's termination from employment, Clyde Stahl discovered additional information which evidenced Workman's failure to perform assigned duties. Stahl documented his discoveries in a memorandum to Hickox dated December 15, 1995. (Exhibit 33.) These documents included an inmate's copy of a parole agreement for an inmate paroled in May, 1995 and documents which pertained to the interstate parole of an inmate to Texas, referenced in Finding of Fact paragraph 51 above. The documents which pertained to the interstate parole of the inmate substantiated the inmate's claim that he had provide Workman the necessary information for submission of the paperwork to the Parole Board 90 days before the Board's meeting. (Exhibit 44.)

68. Stahl also discovered that 10 inmate's assigned to Workman's caseload prior to his termination were scheduled to meet the Parole Board on December 11, 1995. Workman had not prepared a parole plan for five of the inmates and seven of the inmates did not have risk assessments or parole guidelines prepared.

#### **DISCUSSION**

Respondent contends that it established that complainant engaged in the acts for which discipline was imposed, that the discipline was proven to constitute wilful misconduct and a failure to perform assigned duties, and that the decision to demote complainant in August, 1995, and the decision to terminate his employment made in December, 1995, was neither arbitrary, capricious or contrary to rule or law.

Respondent further contends that there is a presumption of regularity which attaches to all administrative actions. Respondent argues that complainant failed to rebut the presumption of regularity with regard to the delegation of appointing authority to Superintendent Bob Hickox. Respondent argues that since the letters notifying complainant of the disciplinary demotion and termination of his employment were copied to John Perko, the disciplinary actions were ratified under Board Rule, R1-4-2 (A).

Complainant contends that respondent failed to establish that the actions proven to have occurred constitute grounds for the disciplinary action imposed here. Complainant contends that Board Policy 8-3-(A) was violated because respondent did not impose progressive discipline on complainant. It is argued that respondent's first disciplinary decision to demote complainant for a one year period had barely taken effect before respondent

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decided to terminate complainant's employment.

Complainant contends that he had been a productive and effective employee for many years, that he had personal difficulties during 1994 and 1995 and that he should not have been demoted or terminated when he failed to perform up to Hickox's standards in 1995.

Complainant further contends that Hickox was not properly delegated appointing authority to impose discipline in August or December, 1995. Complainant argues that under section 24-1-128.5(2)(a) C.R.S. (1988 Repl. Vol 10A) John Perko, director of the division of adult services, had appointing authority. Therefore, any delegation of that authority to Hickox could only properly come from Perko, not Warren Diesslin, western region director.

Further, complainant argues that the delegation requested by Hickox and granted by Warren Diesslin was only for the purpose of conducting a R8-3-3 meeting and not for the purpose of imposing discipline. Therefore, complainant contends that the discipline imposed on him was without authority.

The parties both contend that they are entitled to an award of attorney fees and costs under section 24-50-125.5 C.R.S. (1988 Repl. Vol. 10B).

Dated this 23rd day of  
August, 1996, at  
Denver, Colorado.

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Margot W. Jones  
Administrative Law Judge

**CERTIFICATE OF MAILING**

This is to certify that on the 23rd day of August, 1996, I placed true copies of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** in the United States mail, postage prepaid, addressed as follows:

James R. Gilsdorf  
1390 Logan St., Suite 402  
Denver, CO 80203

Thomas S. Parchman  
Assistant Attorney General  
Department of Law  
1525 Sherman St., 5th Floor  
Denver, CO 80203

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**96B026 (C)**